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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,368	12/31/2003	Paul T. Van Gompel	19,446	1176
23556	7590	05/19/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,368

Applicant(s)

VAN GOMPEL ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 March 2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-64 have been considered but are moot in view of the new ground(s) of rejection as discussed below.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Disposable Absorbent Garment with Elastic Outer Layer and Elastic Inner Layer Having Multiple Fasteners.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-6, 8-27, 29-48 and 50-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 4,895,569; herein 'Wilson') in view of Freeland (US 4,990,147; herein 'Freeland'). Regarding claims 1-5, 14 Wilson discloses a disposable

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absorbent diaper garment 10 (column 3, lines 47-50) comprising an outer cover 12 which is liquid-impervious plastic film which may or may not be resiliently stretchable (column 4, lines 34-36) and elastic (column 9, lines 55-67); an absorbent structure/inner layer 32 (column 4, lines 44-47) having a perimeter bonded to the outer layer 12 via ultrasonic autogeneous bonds 68 (column 8, lines 62-column 9, line 2 and figure 2); and wherein the outer surface of the outer layer 12 includes a fastener 42, 44 in the front waist region located laterally inward of each longitudinal side edge (column 5, lines 4-10 and figure 2), the fasteners 42,44 adapted to engage into the inner layer 32 when placed about the wearer (figures 2 and 5) and back waist region fasteners 46,48 located laterally inward of each longitudinal side edge (figure 2), the back waist region fasteners 46,48 adapted to engage into the outer surface of the outer layer in the front waist region (figure 1). Wilson *does not expressly disclose* the inner layer is elastic. **Freeland** discloses disposable diaper 10 (column 2, lines 36-37) comprising a flexible urine impervious back sheet 14 (column 2, lines 53-54), nonabsorbent elastic liner 12 that enhances the conformability and liner shaping to the wearer (column 4, lines 4-6). One would be motivated to modify the inner layer of Wilson with the elastic inner layer of Freeland for improved body conformability during use since the references both disclose disposable absorbent wearing articles with extensible outer covers. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the inner layer and thus provide an elastic inner layer.

Wilson also *does not expressly disclose* the elastic inner layer defines an opening. By applicant's own admission, a slit or aperture in the inner layer is known

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(see page 4, lines 13-16 and page 12, line 18 of the instant Specification). Furthermore, **Freeland** discloses inner liner 12 includes passageway/opening 22 for the communication of waste materials (column 4, lines 43-47). One would be motivated to modify the inner layer of Wilson with the passageway of Freeland for improved fecal material handling during use since the references both disclose disposable absorbent wearing articles with extensible outer covers. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the inner layer and thus provide an opening.

Regarding claim 6 Wilson *does not expressly disclose* the outer layer is liquid permeable. **Freeland** discloses urine pervious nonabsorbent elastic liner 12 that is soft and non-irritating to the skin (column 3, lines 47-49). One would be motivated to modify the outer layer of Wilson with the liquid pervious outer layer of Freeland for improved article softness since the references both disclose disposable absorbent wearing articles with extensible outer covers. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer layer, thus providing a liquid pervious outer layer.

Regarding claims 8-10 Freeland further discloses the elastic inner layer 12 has biaxial or uniaxial elasticity, wherein one principle axis of elasticity is oriented generally parallel to the longitudinal diaper axis (column 4, lines 19-31).

Regarding claim 11 Freeland further discloses the elastic inner layer 12 may include a portion or zone that is urine impervious (column 3, lines 54-55).

Regarding claims 12 and 22 Wilson discloses inner layer 32 comprises an absorbent assembly with two or more layers of materials including top sheet 34, absorbent core 38 and barrier layer 36 (column 4, lines 39-44 and figure 4).

Regarding claim 13 Wilson/Freeland *do not expressly disclose* opening length area values. Size opening is a result effective variable since applicant discloses that the size of the opening may be varied depending on the size of the garment and intended functions of the elastic inner layer (see page 12, lines 18-20, instant Specification). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Wilson/Freeland with the opening length values claimed for enhanced article performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 15-16 Wilson discloses outer layer 12 having a length and width greater than the inner layer (figure 2).

Regarding claim 17 Wilson discloses perimeter bonds 68 that comprise at least 10% of the surface area of the garment (figure 2).

Regarding claim 18 Freeland discloses a smaller inner layer that would inherently have a higher retraction value than the outer layer since the magnitude of the longitudinal contraction should be great enough to provide a snug fit during various motions of the wearer and to avoid red marking (column 4, lines 6-10). The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old

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composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claims 19-20 Wilson/Freeland do not expressly disclose a crotch-to-fastener angle or front center panel length values. Crotch-to-fastener angle is a result effective variable since it is a result of the width of the narrowest part of the crotch region and front center panel length (see Applicant's instant Specification page 23, lines 15-18). Center panel length is a result effective variable since it is a result of the overall article size (see Applicant's instant Specification page 23, lines 29-31). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Wilson/Freeland with the crotch-to-fastener and center panel length values for improved fit and performance, and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 21 Wilson further discloses front waist region fasteners 42, 44 have lengths equal to or less than the front panel length in which the fasteners are contained (figure 2).

Regarding claims 23-27 see the discussion above with respect to claims 1-6 and 22.

Regarding claims 29-42 see the discussion above with respect to claims 8-22.

Regarding claim 43 Wilson further discloses front and rear ear portions 20, 22, 24, 26 that extend across the waistband portion 14 to the leg openings 18 (column 4, lines 52-61).

Regarding claims 44-48 see the discussion above with respect to claims 1-6 and 43.

Regarding claims 50-63 see the discussion above with respect to Claims 8-21 and 43.

Regarding claim 64 see the discussion above with respect to claims 1, 14, 17 and 43.

5. Claims 7, 28 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 4,895,569; herein 'Wilson') in view of Freeland (US 4,990,147; herein 'Freeland') as applied to claim 1, and further in view of Clear et al. (US 5,690,627; herein 'Clear'). Wilson/Freeland *do not expressly disclose* the outer cover having one or more pleats. **Clear** discloses disposable absorbent diaper 20 comprising fastening system 36 disposed laterally inward from the longitudinal side edge (column 4, lines 24-31 and figure 1) comprising flexible impervious back sheet/outer layer 26, 226 (column 6, lines 57-62), zero strain stretch laminate top sheet/inner layer 24 (column 8, lines 14-17), and pleats 380 on the outer cover 226 for improved fit (column 16, lines 14-17). One would be motivated to modify the outer cover of Wilson/Freeland with the pleated outer cover of Clear for improved fit since the references disclose disposable absorbent wearing articles with flexible outer and inner layers. Therefore, it would be obvious to

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one of ordinary skill in the art at the time the invention was made to modify the outer layer, thus providing pleats in the outer layer.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

